

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY JE D.C.  
05 JUN -3 AM 6:52

DEBRA PRICE, ROBERT TUCKER,  
AUBREY CARLISLE, MARVIN L. NUTT  
and all similarly situated persons,

Plaintiffs,

v.

ACOSTA, INC.,

Defendant.

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CIVIL ACTION  
NO. 03-2686-MI/P

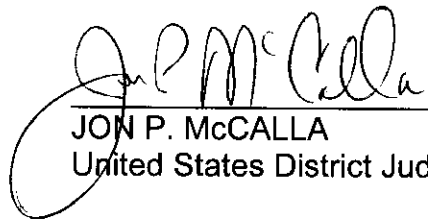
Robert R. Di Trolio  
CLERK, U.S. DIST. CT.  
W. D. OF TN, MEMPHIS

ORDER ON PLAINTIFFS' MOTION  
FOR LEAVE TO SEND NOTICE OF COLLECTIVE ACTION  
TO PUTATIVE CLASS MEMBERS

Before the Court is Plaintiffs' Motion for Leave to Send Notice of Collective Action to Putative Class Members, filed on May 18, 2005. The Court has reviewed the submissions and arguments of both parties, and conducted an oral telephone conference with counsel on June 2, 2005, wherein counsel for both parties agreed to modifications. The Court believes the Order attached hereto as an exhibit is both reasonable and appropriate.

IT IS, THEREFORE, ORDERED that the Notice attached hereto, along with the accompanying Consent to Become Party Plaintiff form, shall be sent to those individuals identified by the parties as members of the prospective class in this collective action.

IT IS SO ORDERED, this 2 day of June, 2005.

  
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JON P. McCALLA  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION**

DEBRA PRICE, ROBERT TUCKER, }  
AUBREY CARLISLE, MARVIN L. NUTT }  
and all similarly situated persons, }

Plaintiffs, }

v. }

ACOSTA, INC., }

Defendant. }

CIVIL ACTION  
NO. 03-2686 MI/P

**NOTICE OF RIGHT TO JOIN COLLECTIVE ACTION  
FOR UNPAID WAGES AND OVERTIME PAY**

**TO: Certain present and former employees of Acosta, Inc.**

The purpose of this Notice, which has been approved by the Court, is to advise you of a lawsuit brought by certain former employees of Acosta, Inc. In this lawsuit, these plaintiffs are claiming that they and other Acosta employees in each of Acosta's geographic Regions were not paid for all hours actually worked, and were required to turn in time sheets showing only 40 hours a week (32 hours a week for part-time employees), regardless of the number of hours actually worked, in violation of federal law. The Plaintiffs are also claiming that Acosta failed to pay time and one-half (overtime pay), as required by federal law, for all hours worked over 40 in any work week. Acosta denies the allegations.

**WHO MAY PARTICIPATE IN THIS LAWSUIT.** If you have worked for Acosta in either a full-time or part-time capacity in any of the following job titles during any time period since September 12, 2000, and believe that you have worked hours for which you were not paid, or worked hours over 40 in a week for which you were not paid one and one-half times your regular hourly rate, then you are entitled to join in this lawsuit to recover unpaid wages and/or unpaid overtime pay. If you join the lawsuit, you may also be entitled to recover an additional amount equal to your total unpaid wages and overtime pay as "liquidated damages" as provided by federal law. The job titles included in this lawsuit are:

- |                                   |   |
|-----------------------------------|---|
| (1) Territory Manager/Reset;      | (2) Senior Territory Manager/Reset;         |
| (3) Territory Manager;            | (4) Senior Territory Manager;               |
| (5) Retail Coverage Merchandiser; | (6) Dedicated Retail Coverage Merchandiser; |
| (7) Store Reset Specialist;       | (8) Store Reset Coordinator;                |
| (9) Retail Sales Representative;  | (10) Category Sales Representative          |

**DETERMINING ELIGIBILITY AND COMPENSABLE HOURS.** All of the above job titles (with the exception of the Category Sales Representative) are "non-exempt" positions under the Fair Labor Standards Act. This means that if you held one of these positions then you should have been paid for all hours actually worked, even if all of those hours were not recorded on your time sheets. Under Acosta's written policy and federal law, you should have been paid for all hours actually spent doing any work for Acosta, including:

- all travel time beyond the initial commute from home to and from work sites that exceeds one hour each way;
- all travel between stores to perform work for Acosta;
- all work time in the stores; and
- all work hours, regardless of where or when incurred, including but not limited to administrative paper work and telephone work conducted at the office, stores, or home.

Exhibit

If you worked more hours than you reported on your time sheets, then you may be entitled to be paid for all those hours you actually worked up to 40 hours at your regular hourly rate. For all hours you worked over 40 hours a week, you may be entitled to be paid an overtime premium of one and a half times your hourly rate. The Court will determine the time period during which each person is eligible to recover unpaid wages and overtime pay, but the law generally allows for recovery going back two years from the date a person files the enclosed Consent form (three years if the alleged violation is shown to have been "willful").

**HOW TO JOIN THIS LAWSUIT.** If you wish to join this suit, you must sign and date the enclosed CONSENT TO BECOME PARTY PLAINTIFF form and return it within thirty (30) days to the following address:

**NORWOOD, HOWARD & ATCHLEY**  
1407 Union Avenue, Suite 807  
Memphis, TN 38104

(A pre-addressed, pre-paid return envelope is included with this Notice. Additional Consent forms may be obtained from Norwood, Howard & Atchley, by calling (901) 276-7676 or (800)356-8907).

**EFFECT OF JOINING THIS LAWSUIT.** If you join this lawsuit, unless you also elect to retain your own legal counsel, your interest will be represented by the Plaintiffs' attorneys, NORWOOD, HOWARD & ATCHLEY, who have been designated by the Court as legal counsel for the class representatives, who are the named Plaintiffs. If you join this lawsuit, you will be bound by any settlement or judgment. You will also be required to provide information regarding your work hours and hourly rate of pay. It is also possible that you may be required to give testimony regarding your work hours at some point. You will not be required to pay any costs or attorney fees directly. If you choose not to return the enclosed Consent form, you will not be a participant in this lawsuit and will not be affected by the judgment or any settlement. You are free to file your own lawsuit, or take no action at all.

**CLASS COUNSEL.** The Plaintiffs' attorneys and attorneys for the class are:

**NORWOOD, HOWARD & ATCHLEY**  
1407 Union Avenue, Suite 807  
Memphis, TN 38104  
Tel: 901/276-7676 or 800/356-8907  
Fax: 901/276-7212  
E-Mail: jatchley@nhalaw.com

#### **RETALIATION PROHIBITED**

The law prohibits your employer from discriminating or retaliating against you for taking part in this case. If you believe you have been penalized, discriminated against, or in any way disciplined or punished, or if you have been threatened or intimidated in any way as a result of your receipt of this notice or election to participate in this lawsuit, you should immediately contact Norwood, Howard & Atchley.

This Notice and its contents have been authorized by the United States District Court, Hon. Jon Phipps McCalla, U.S. District Judge. The Court has taken no position regarding the merits of the claims or defenses of the parties.



## Notice of Distribution

This notice confirms a copy of the document docketed as number 79 in case 2:03-CV-02686 was distributed by fax, mail, or direct printing on June 6, 2005 to the parties listed.

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Honorable Jon McCalla  
US DISTRICT COURT